

HELEIN & ASSOCIATES, P. C.

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE
SUITE 700
MCLEAN, VA 22102

(703) 714-1300 (TELEPHONE)
(703) 714-1330 (FACSIMILE)
mail@helein.com (EMAIL)

WRITER'S DIRECT DIAL NUMBER:

(703) 714-1301

WRITER'S DIRECT EMAIL ADDRESS:

September 25, 1997

Via Facsimile and First Class Mail

(205) 943-2884

Gail F. Barber, General Attorney
BellSouth Telecommunications, Inc.
Legal Department
2nd Floor
75 Bagby Drive
Homewood, Alabama 35208

Dear Ms. Barber:

This firm represents the Independent Payphone Service Providers for Consumer Choice ("IPSPCC"). Under advice given by the FCC, the contents of this letter were sent first to the firm of Kellogg, Huber, et al., in Washington, D.C. on September 17, 1997. The FCC had been contacted to determine the proper BellSouth legal representative to whom the following proposal should be submitted. Since the Kellogg firm responded that it did not represent BellSouth or other RBOCs in regard to the issues on payphones addressed herein, we are sending this letter to your attention given that you authored the September 9th response to the July 30th letter submitted on behalf of the IPSPCC (then the "Ad Hoc Committee for Consumer Choice") to the FCC.

We ultimately obtained a copy of your letter response of September 9th after speaking with Susan Fox of the FCC's Competition Task Force as one was not served on this firm. For the record, we will be submitting a response to your letter of September 9th shortly. In the meantime, we ask that your office address the following proposals or advise us to whom these proposals should be sent, if not within the scope of responsibilities of your office to address.

These proposals are being made in an effort to avoid the necessity for additional filings seeking remedial or proactive, procompetitive actions by the Federal Communications Commission, the Department of Justice, the appropriate Congressional Committees considering the need for

FILE COPY

revisions to the Telecommunications Act of 1996 ("Amended Act"), the state attorneys general, the state regulatory agencies and/or the courts. Existing filings and the need for further such filings has been created by the tactics BellSouth is employing in the marketplace for competitive payphone services under the guise of exercising the right to enter this market pursuant to section 276 of the Amended Act.

Corrective actions, as detailed in the following eleven points, must be taken immediately. The actions described in the IPSPCC's 11 points constitute probable, if not palpable, unreasonable refusals to provide service upon reasonable request therefor in violation of section 201 of the Amended Act; undue discrimination and creation and maintenance of undue preferences in violation of section 202 of the Amended Act; violation of filed CEI plans, in turn constituting a violation of section 276 of the Amended Act; unreasonable restraints of trade in violation of Section 1 of the Sherman Antitrust Act, illegal tying arrangements, denial of equal access, slamming, deceptive practices, unfair competition, and tortious interference with contracts.

The IPSPCC has information that suggests that, while such anticompetitive conduct continues and is expanding, the cause therefor may be due to the lack of knowledge about such conduct at higher management levels within your company. The IPSPCC seeks, therefore, to test the accuracy of this information by scheduling a meeting to discuss your company's willingness and commitment to take immediate, effective and lasting corrective action to eliminate current and future instances of the conduct complained of herein. To expedite matters, the IPSPCC is willing to ask the FCC's staff to act as mediator and to chair the meeting.

At the meeting, the scheduling of which is sought hereby, the actions for which immediate corrective action needs to be discussed and implemented include, without limitation:

1. Immediate rescission of policy refusing to accept traditional three-way conference calls to place orders, including PIC selections, among independent competitive pay phone providers ("IPSPs"), premises owners or location providers (collectively "LPS"), and BOC ("Bell") representatives.
2. Immediate rescission of Bell policy of refusing to allow LPS to make an independent PIC selection or face additional monthly charges, removal of Bell payphones or other penalty.
3. Immediate rescission of Bell policy of tying continued availability of Bell-owned payphone terminals to the LPS selection of Bell's competitive payphone arm (unseparated division or separate subsidiary) ("BPSP").

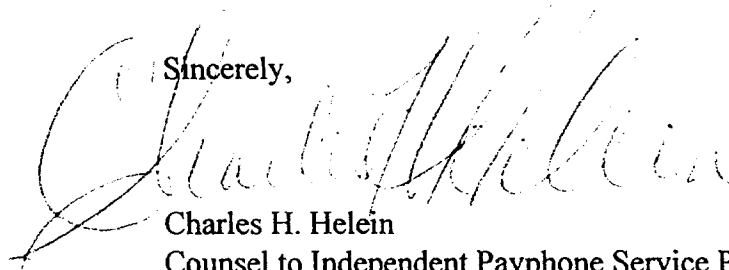
4. Immediately ceasing to ignore IPSPs' existing contractual relationships with LPS, including without limitation, by assuming the non-existence of any oral contract or contract implied in fact, based on existing provisioning of service to LPS (such contracts officially having been recognized as having legal validity by the FCC in connection with the provisioning of telecommunications services).
5. Immediately ceasing interference with IPSPs' existing contractual relationships with LPS, based on ignoring the IPSPs' existing contractual relationships with LPS as detailed in item 4, preceding.
6. Immediate rescision of Bell policy of demanding a copy of LP's written contract with IPSP.
7. Immediate rescision of Bell policy of disregarding an IPSP's contract with an LP which refuses or fails to furnish a written contract as demanded by BPSP in response to policy identified in item 5, preceding, and/or any other policy or practice.
8. Immediate rescision of Bell policy of informing LPS that when any contract with an IPSP expires, the LP must choose the BPSP's PIC and will, thereafter, not be allowed to change the PIC at any time in the future.
9. Immediate rescision of Bell policy of informing LPS that if they cannot or refuse to produce a written contract with an IPSP, the BPSP informs the LP that no contract exists, that the LP must choose the BPSP's PIC and will, thereafter, not be allowed to change the PIC at any time in the future.
10. Immediate rescision of Bell policy of having LPS sign contracts presented as Letters of Agency or LOAs, but containing a clause that cedes all future authority to select the PIC to the BPSP (copy attached).
11. Immediate reorganization of order processing personnel and channels of processing orders submitted by LPS and/or IPSPs, by removing the direct conflict of interest created by having the personnel who were formerly employed by the Bell regulated local exchange company ("LEC"), now employed as part of the deregulated BPSP so that they may and do act as a bottleneck in the processing of IPSP orders for the competitive provision of payphone services to LPS.

If you are willing to meet to discuss resolution of these most serious concerns with representatives of the IPSPCC, please contact the undersigned at your earliest convenience. The IPSPCC will withhold filing actions for a period not to exceed ten (10) days from the date of this

Gail F. Barber
September 25, 1997
Page 4

letter. The IPSPCC's agreement to postpone further filings in its effort to resolve matters through negotiations and private actions does not extend to any filing deadlines or requirements established by regulatory or other government authorities on matters to which the issues raised herein have relevance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Helein". The signature is written in dark ink and is positioned above the printed name and title.

Charles H. Helein
Counsel to Independent Payphone Service Providers
For Consumer Choice

Enclosure

smh\530bellsouth.11p

RECEIVED SEP 11 1997



Mississippi Public Service Commission

BO ROBINSON, COMMISSIONER

P. O. BOX 1174, JACKSON, MISSISSIPPI 39215-1174 (601) 961-5450 or 800-356-6428

September 8, 1997

The Honorable Charles H. Helein
8180 Greensboro Drive, Ste. 700
McLean, Virginia 22102

Dear Mr. Helein:

Please find enclosed the information regarding the deregulation of payphone services. I believe you will find the information to be a detailed explanation of the issues you have addressed; however, if we have overlooked anything, you just simply let us know.

Mississippi is experiencing many changes in the utility industry. If you have further questions regarding your service, we would be more than happy to supply you with the answers. Thank you for your expression of interest in our work at the Commission. It is always helpful to have another viewpoint.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bo", is written over a horizontal line.

Bo Robinson, Vice Chairman
Northern District

BR:swb

Enclosure

MEMORANDUM

To: Commissioner Bo Robinson

From: Vicki Helfrich

Re: Complaint against BellSouth Public Communications, Inc.

Date: September 5, 1997

This is in response to the complaint of Mr. Charles Helein. The Telecommunications Act of 1996, Sec. 276, and the subsequent FCC Order in Docket 96-128 mandated the deregulation of payphone services. In that order, LEC's were mandated to insure that the revenues from payphone operations completely covered the cost of those operations. BellSouth reduced switched access rates to eliminate \$1.38M in regulated revenues that were determined to be subsidizing their payphone operations. They also formed a separate subsidiary, BellSouth Public Communications, Inc., to handle all payphone operations.

Basically, two types of payphone arrangements were offered by BellSouth at the time of the FCC's Order: Public Payphone service and SemiPublic service. SemiPublic service was provided at locations where a customer requested a payphone, but traffic volumes from the location would not be sufficient to make the set profitable. The location provider was charged the rate for an ACP line. The rate for an ACP line did not cover the cost of providing the line and the set. Therefore, in an effort to comply with the FCC's order stating that a payphone service could not be provided below cost, and in an effort to deter any rate increases, BellSouth Public developed two options for the business owners where SemiPublic sets were located. The business owner could allow BellSouth Public to choose the long distance provider for the set. If they did, BellSouth Public would receive a commission from the long distance provider, which would enable them to keep the SemiPublic service at the same rate they had previously charged. On an average, this would bring the revenues up to a level that recovered the cost of providing the service. However, if the location provider desired to choose the long distance provider, the rate for SemiPublic would have to increase by \$15.00 per month to cover the costs.

There were approximately 1800 SemiPublic sets in service at the time of the FCC's Order, out of approximately 14,000 pay stations. Therefore, the vast majority of BellSouth Public's payphones are the type where the location provider is not charged for the set and is paid a commission on the set.

We are monitoring the marketplace and will recommend any action should we discover any evidence of wrongdoing on the part of any telecommunications provider.

cc: Bobby Waites
Dorman Davis
Shirley Bounds

HELEIN & ASSOCIATES, P. C.

ATTORNEYS AT LAW

8180 GREENSBORO DRIVE

SUITE 700

MCLEAN, VA 22102

(703) 714-1300 (TELEPHONE)

(703) 714-1330 (FACSIMILE)

mail@helein.com (EMAIL)

WRITER'S DIRECT DIAL NUMBER:

(703) 714-1301

WRITER'S DIRECT EMAIL ADDRESS:

September 18, 1997

The Honorable Bo Robinson
Vice Chairman
Northern District
Mississippi Public Service Commission
P.O. Box 1174
Jackson, Mississippi 39215-1174

Dear Chairman Robinson:

The Ad Hoc Committee of Independent Payphone Providers sincerely appreciates the time and effort you expended in investigating the complaint lodged against BellSouth in its activities regarding payphone services in your state. The Committee also appreciates receiving a written explanation of the report provided, presumably by a Commission staff member, which accompanied your letter of September 8, 1997.

The staff analysis raises a few questions which the Committee will be examining with a view toward providing a follow-up inquiry, if needed. The questions stem from the following considerations.

Prior to section 276's enactment and the FCC's implementing orders, BellSouth payphones had been paid for through tariffed rates as part of BellSouth's monopoly service offerings. The FCC's implementing orders converted these phones into customer premises equipment ("CPE") and required that they be transferred off the books used to calculate BellSouth's regulated services.

Since BellSouth created a payphone subsidiary, BellSouth Public Communications, Inc., the proper valuation of the payphones transferred to its affiliates was net book cost. Separated out of any costs associated with the newly deregulated payphone terminals (CPE) were any line costs. Conversely, all payphone set costs were taken out of the CCL.

As to line costs for payphones, the SLC applies in order to allow recovery of regulated costs associated with those lines. Moreover, any SLC deficit costs (those which exceed the \$6.00 cap on the multi-line SLC charge) will continue to be recovered through the CCL. These principles appear

September 18, 1997

Page 2

in the FCC's November 8, 1996 Order on Reconsideration in CC Dockets 96-128 and 91-35, FCC 96-439, ¶¶ 206-207. Interestingly, BellSouth is cited by the FCC as supporting the correctness of these principles.

Analyzing the September 5, 1997 memorandum to you from Vicki Helfrich, we have been unable to reconcile these principles with the reasons cited in defense of BellSouth's \$15.00 monthly charge. First, we have been unable to identify any relevance to the fact that some payphones are SemiPublic versus Public. While it may be true that some SemiPublic phones have lower volumes and are less profitable, it does not follow that a \$15 monthly charge imposed only on end users with such phones has any rational or justifiable relationship to that alleged lower profitability. Of course, we are unaware of any cost studies supporting the use of this charge for the reasons cited. If there are any, it would advance the debate substantially if the staff could provide them to us.

Second, we are unfamiliar with the reference to an ACP line. Nor do we understand the rationale that the \$15 charge is justified by the alleged unremunerative nature of the "ACP rate." Our current understanding, which we continue to study to determine its correctness, is that there should be no line charges which are not recovered under tariff by the regulated side of BellSouth's operations and wholly independently of any aspect of the non-regulated payphone side. If this is true, the justification for assessing a monthly charge to recoup regulated costs in connection SemiPublic phones or any phones is erroneous.

Third, a continuing monthly charge amounting to \$180 per year could be compared to actual historical cost figures at net book costs, the asset value it is understood at which the payphones had to transferred to BellSouth's payphone affiliate as required by the FCC's Order cited above.

Fourth, even if one assumes there is a basis for a monthly charge when the location provider refuses to select BellSouth's payphone subsidiary's PIC, it is not presented to location providers as an option. That is, the \$15 monthly charge is presented not as a package service offering, but as a form of penalty for refusing to select BellSouth's PIC.

Fifth, if the costs allegedly covered by the \$15 charge are related in any way to costs incurred from the provisioning of basic exchange access services, it would appear the charge violates the FCC's Order and section 276's mandate that all payphone subsidies be eliminated from the regulated side of BellSouth's operations. BellSouth's payphone subsidiary cannot by law seek to recover portions of the costs incurred by its parent to provide regulated service to payphone users.

There is also the issue that the \$15 monthly charge has not been accepted in other BellSouth states as having been proven valid. A complaint proceeding is currently pending in Georgia, for example.

To provide additional support for why the Committee is concerned, we have included signed

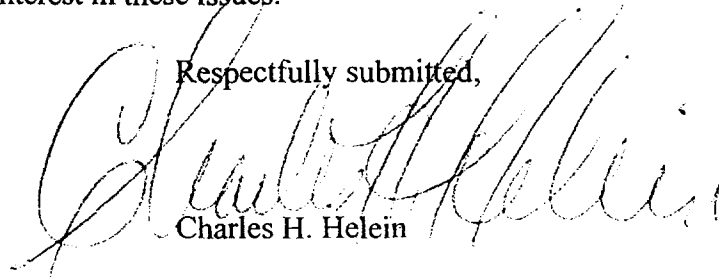
September 18, 1997

Page 3

statements and an affidavit detailing sorry experiences in the trenches of the competitive marketplace. The Committee continues to collect such reports and, after investigation, attempts to obtain the cooperation of end users to allow the Committee to bring these instances to the attention of the appropriate government officials. As the Committee obtains more such information, we will make it available to all concerned.

We will complete a more detailed analysis shortly and bring your office up-to-date as warranted. We appreciate the interest in these issues.

Respectfully submitted,

A large, stylized handwritten signature in dark ink, appearing to read "Charles H. Helein". The signature is written over the typed name and extends upwards and to the left.

Charles H. Helein

Enclosure

smh\530\missrspn.lt1

RECEIVED AUG 18 1997



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 15, 1997

Charles H. Helein, Esquire
Helein & Associates, P.C.
8180 Greensboro Drive, Suite 700
McLean, VA 22102

Re: Action Required On Payphone Competition -
Regional Bell Operating Companies

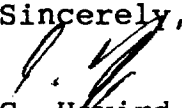
Dear Mr. Helein:

Attorney General Condon's Office is in receipt of your recent correspondence regarding the above-referenced matter. We appreciate your concerns and thank you for taking the time to contact us.

At the present time, this Office has made arrangements with the South Carolina Department of Consumer Affairs to have that agency make a preliminary inquiry regarding the type of claim or question you have raised. As you may be aware, Attorney General Condon has placed a high priority on the handling of matters related to the criminal justice system in this Office. The Consumer Affairs office is well equipped to handle the bulk of consumer matters. In the event that agency makes a determination that the Attorney General's Office should be contacted due to possible criminal involvement or other legal issues which are not within their jurisdiction, they will contact us.

I am taking the liberty of forwarding your correspondence to the Department of Consumer Affairs. Additionally, you may contact that agency directly at P. O. Box 5757, Columbia, South Carolina 29250-5757. I hope that this will be of some assistance to you. Again, I appreciate your taking the time to contact us. Should you have additional questions, please feel free to contact our Office at (803) 734-3970.

Sincerely,


C. Havird Jones, Jr.
Senior Assistant Attorney General

CHJJr/bvc

cc: SC Department of Consumer Affairs



THURBERT E. BAKER
ATTORNEY GENERAL

Department of Law
State of Georgia

RECEIVED OCT 17 1997

40 CAPITOL SQUARE SW
ATLANTA, GA 30334-1300

October 14, 1997

WRITER'S DIRECT DIAL:
(404) 656-3337
FAX (404) 651-9148

Charles H. Helein
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, Virginia 22102

Dear Mr. Helein:

Thank you for your correspondence regarding BellSouth's treatment of rights of end users to select interexchange carrier of their choice to service payphones located on their premises. I appreciate your bringing this matter to my attention. In the State of Georgia, the Public Service Commission is vested with the authority to regulate telecommunication activities. This office acts as legal counsel to the Commission. For that reason, I have taken the liberty of forwarding your letter to the Commission for its review by cover of a copy of this letter to you. You may send all future correspondence directly to the Commission at the address shown below:

Whitney Peters
Georgia Public Service Commission
Room 170
244 Washington Street
Atlanta, Georgia 30334

I hope that I have been of assistance to you.

Sincerely,

ALAN GANTZHORN
Senior Assistant Attorney General

AG/klm

cc: Whitney Peters
Georgia Public Service Commission